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Company

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

LISA EPHREM, dba CARR CITY,

Plaintiff,

v.

LIFEMAP ASSURANCE COMPANY,

Defendant.

Case No. 3:13-cv-01693-PK

DEFENDANT'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6)

Oral Argument Requested

L.R. 7-1(a) CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7-1(a), Defendant certifies that the parties made a good faith effort through a telephone call between counsel on September 27, 2013, to resolve their dispute and have been unable to do so.

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MOTION

Pursuant to Fed. R. Civ. P. 12(b)(6) Defendant LifeMap Assurance Company (“LifeMap”) moves the Court to dismiss Plaintiff Lisa Ephrem, dba Carr City’s (“Plaintiff”) Complaint alleging common law breach of contract, breach of the covenant good faith and fair dealing, and breach of covenant of good faith and fair dealing-sounding in tort for failure to state a claim upon which relief can be granted. Plaintiff seeks to recover benefits allegedly due under the terms of an employee welfare benefit plan, specifically a group life insurance policy. Plaintiff’s Complaint is preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.* The sole and exclusive remedy for a benefit due under the policy is a civil enforcement action under 29 U.S.C. § 1132(a). In addition, Plaintiff is not the beneficiary allegedly owed the death benefit and lacks standing to bring a claim. Thus, Plaintiff’s Complaint should be dismissed in its entirety.

This Motion is supported by the Memorandum Supporting LifeMap’s Motion to Dismiss filed herewith.

DATED this 30th day of September, 2013.

Respectfully submitted,

GARVEY, SCHUBERT & BARER

By s/Eric A. Lindenauer
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT'S MOTION TO DISMISS** was served on:

Jacob Wieselman
Wieselman Law Group
312 NW 10th Avenue, Suite 200
Portland, OR 97209

jackw@wgroup-law.com
Attorney for Plaintiff

by mailing to him a copy of the original thereof, contained in a sealed envelope, addressed as above set forth, with postage prepaid, and deposited in the mail in Portland, Oregon, on September 30, 2013.

s/ Eric A. Lindenauer
Eric A. Lindenauer, OSB #833721

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